

Legal Power to the Peatlands: Wetlands, Law and the Journey from Wasteland to Lifeline?

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Ghent University





1. The original sin





Left panel: The Garden of Eden



Center panel: The Garden of Earthly Delights



Right panel: The hell



Hiëronymus Bosch





Hell

The image is a composite of two photographs. The top photograph shows a dense field of tall, dry, golden-brown grasses under a hazy, overcast sky. The bottom photograph shows a wide, flat, arid landscape with a winding, shallow river or canal cutting through it. The water is dark and reflects the sky. The surrounding land is dry, cracked, and brown, with some sparse, low-lying vegetation. The horizon is flat and distant.

The Garden of Eden Dries Up

Iraqi Marshlands Under Threat

Some say the Garden of Eden was located between the Tigris and Euphrates rivers in present-day Iraq. Now, the wetlands there are drying up. The man fighting to save the marshes is risking his life to do so.



Welcome to my garden of Eden

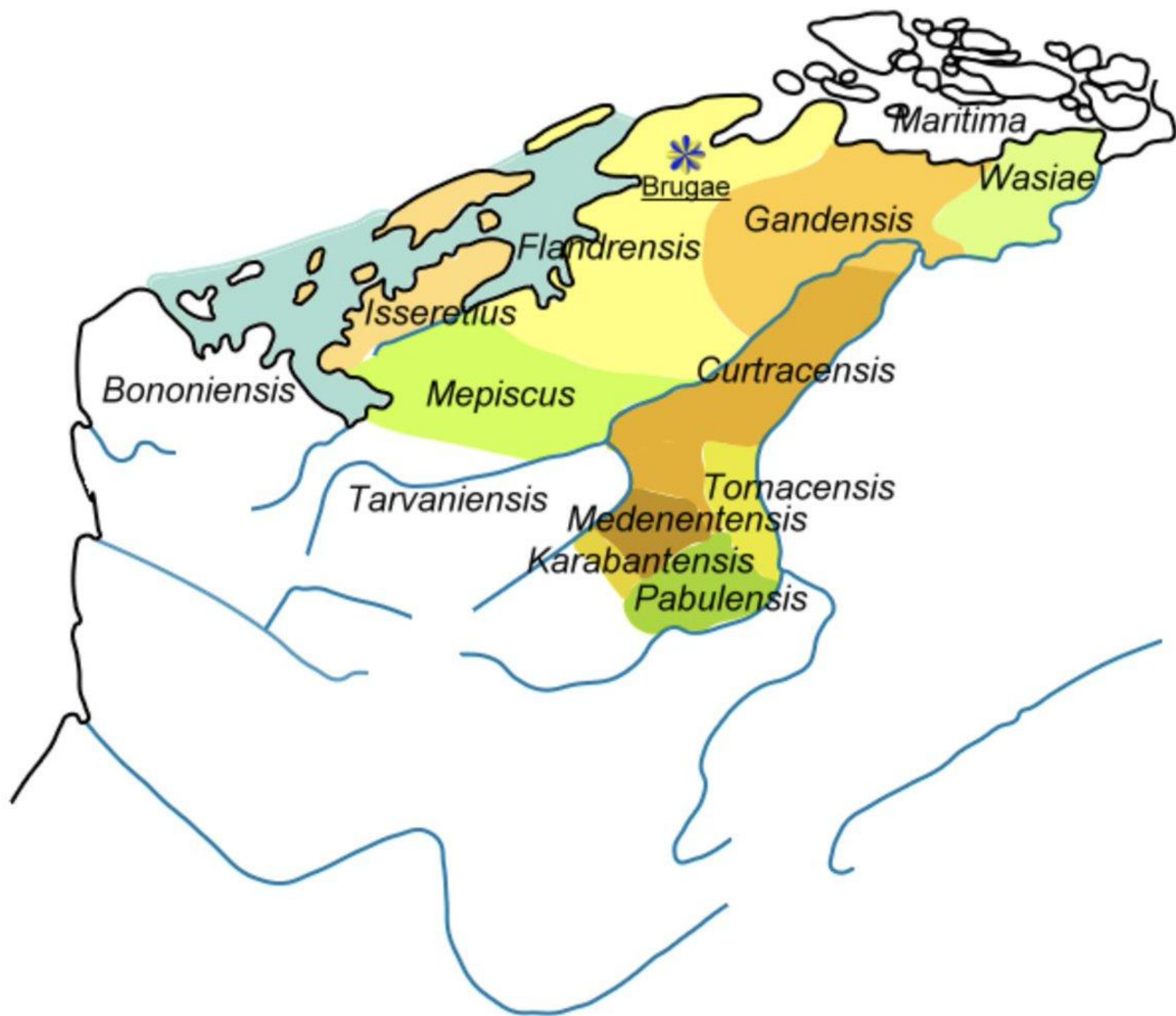


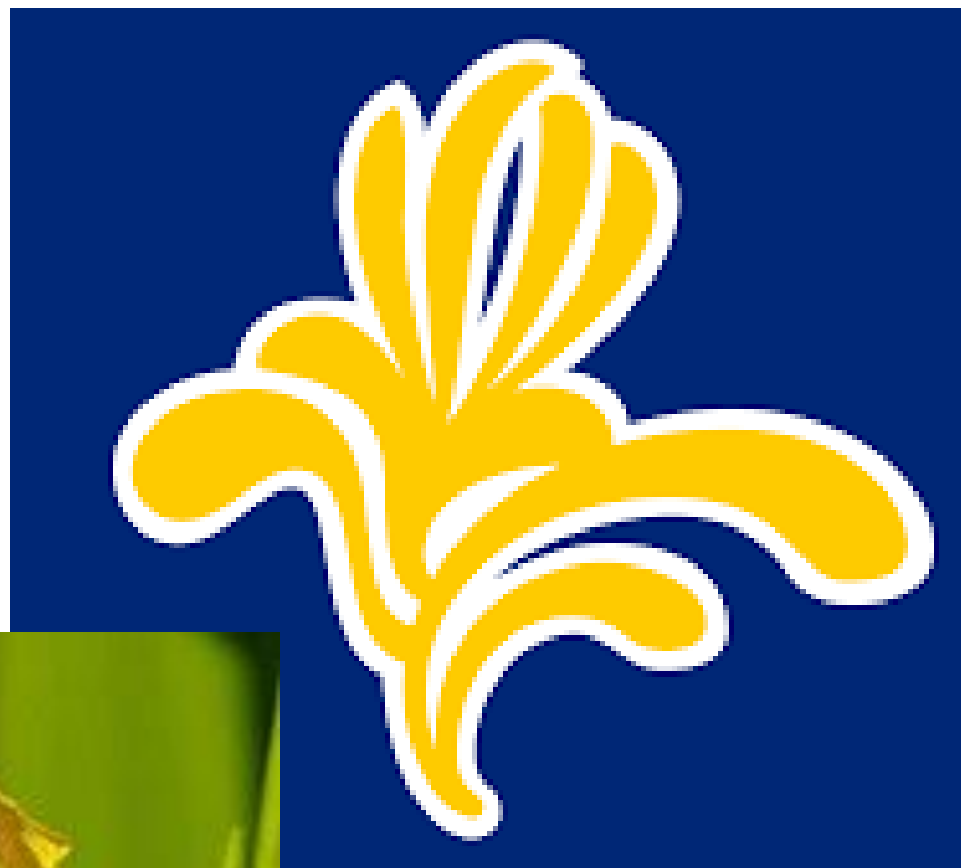




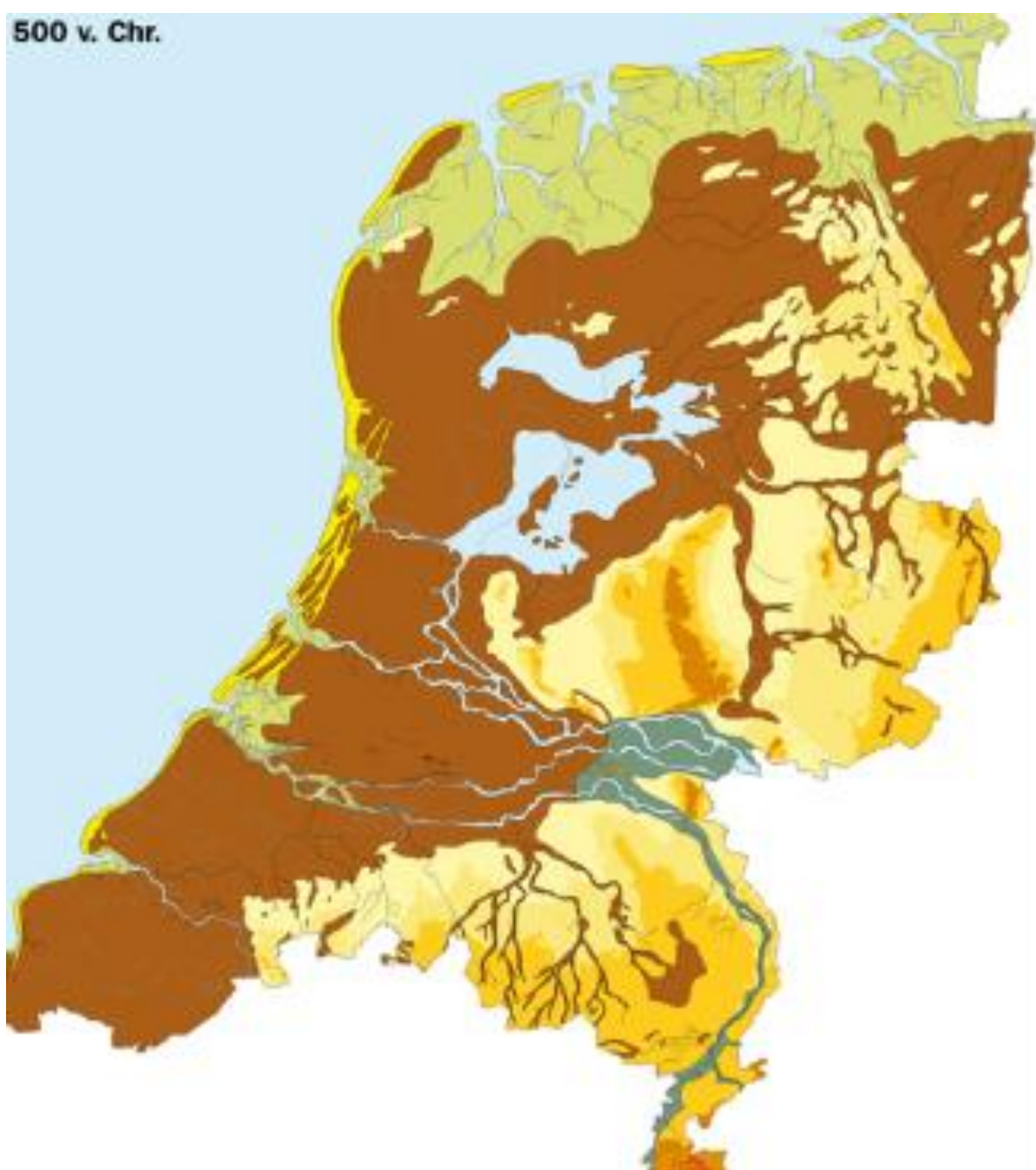
Natuurinspectie legt werken aan moerasgebied stil na eerdere aanmaning







500 v. Chr.



2. Swamp acts: let's drain the swamp!





**DRAINING
THE
SWAMP**

COME ON IN...
THE WATER'S
FINE!

LOBBYISTS







CHAP. LXXXIV.—*An Act to enable the State of Arkansas and other States to reclaim the "Swamp Lands" within their limits.*

Sept. 28, 1850.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That to enable the State of Arkansas to construe the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of those swamp and overflowed lands, made unfit thereby for cultivation, which shall remain unsold at the passage of this act, shall be, and the same are hereby, granted to said State.

Swamp and overflowed lands unfit for cultivation granted to Arkansas.

SEC. 2. *And be it further enacted,* That it shall be the duty of the Secretary of the Interior, as soon as may be practicable after the passage of this act, to make out an accurate list and plats of the lands described as aforesaid, and transmit the same to the governor of the State of Arkansas, and, at the request of said governor, cause a patent to be issued to the State therefor; and on that patent, the fee simple to said lands shall vest in the said State of Arkansas, subject to the disposal of the legislature thereof: *Provided, however,* That the proceeds of said lands, whether from sale or by direct appropriation in kind, shall be applied, exclusively, as far as necessary, to the purpose of reclaiming said lands by means of the levees and drains aforesaid.

Secretary of the Interior to make out list and plats of said land, and when requested, to grant a patent vesting the same in the State of Arkansas.

Proviso.

SEC. 3. *And be it further enacted,* That in making out a list and plats of the land aforesaid, all legal subdivisions, the greater part of which is "wet and unfit for cultivation," shall be included in said list and plats; but when the greater part of a subdivision is not of that character, the whole of it shall be excluded therefrom.

When the greater part of a subdivision is unfit for cultivation, it shall be included in said plats; if the greater part be not of that character, it shall be excluded.

SÉNAT DE BELGIQUE.

SÉANCE DU 31 JUILLET 1862.

Rapport de la Commission des Finances, chargée d'examiner le Projet de Loi qui exempt tem- porairement des frais de régie les terrains in- cultes, boisés pour le compte des communes et des établissements publics.

(Voir les Nos 120 et 155 de la Chambre des Représentants.)

MESSIEURS,

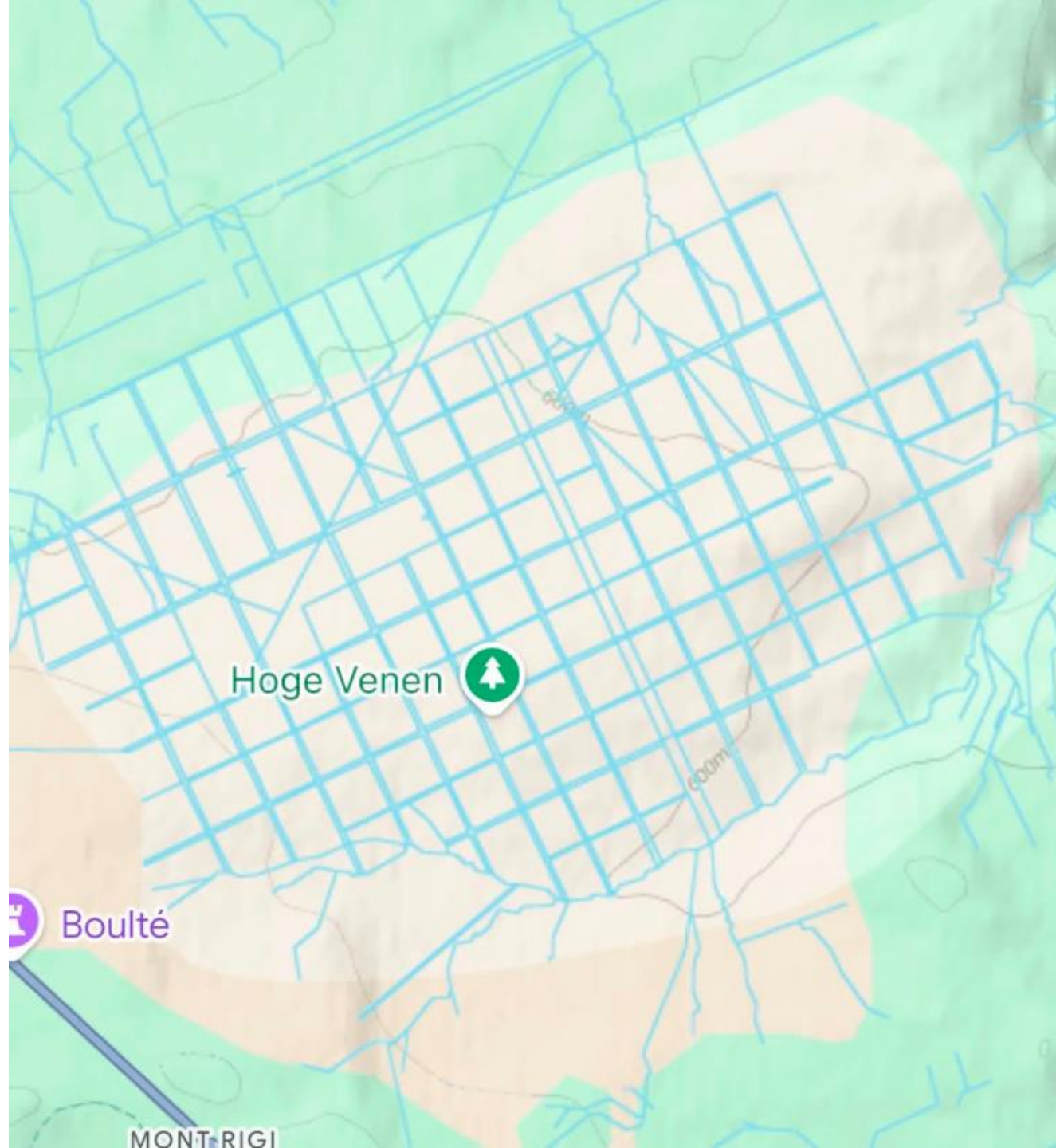
Dans le but de favoriser le défrichement des terrains communaux incultes, plusieurs lois ont accordé des exemptions de contributions et autres charges. Une loi du 23 mars 1847 a tracé et simplifié les formalités à observer à ce sujet et accorde une exemption du paiement de la contribution foncière relative à ces terrains.

Le Projet de Loi qui nous est soumis a pour but d'étendre cette exemption à tous les frais de régie et de surveillance pendant les dix premières années, à compter du jour du semis ou de la plantation. Les boisements existants au moment où la présente loi sera obligatoire, jouiront de la même exemption pour la partie restante à courir du terme de dix ans fixés par l'article 1^{er}.

La section centrale et la Chambre des Représentants l'ont adopté à l'unanimité. Il en a été de même au sein de votre Commission des Finances.

Le Président,
Baron BETHUNE.

Le Rapporteur,
CASSIERS.



Hoge Venen



Boulté

MONT-RIGI

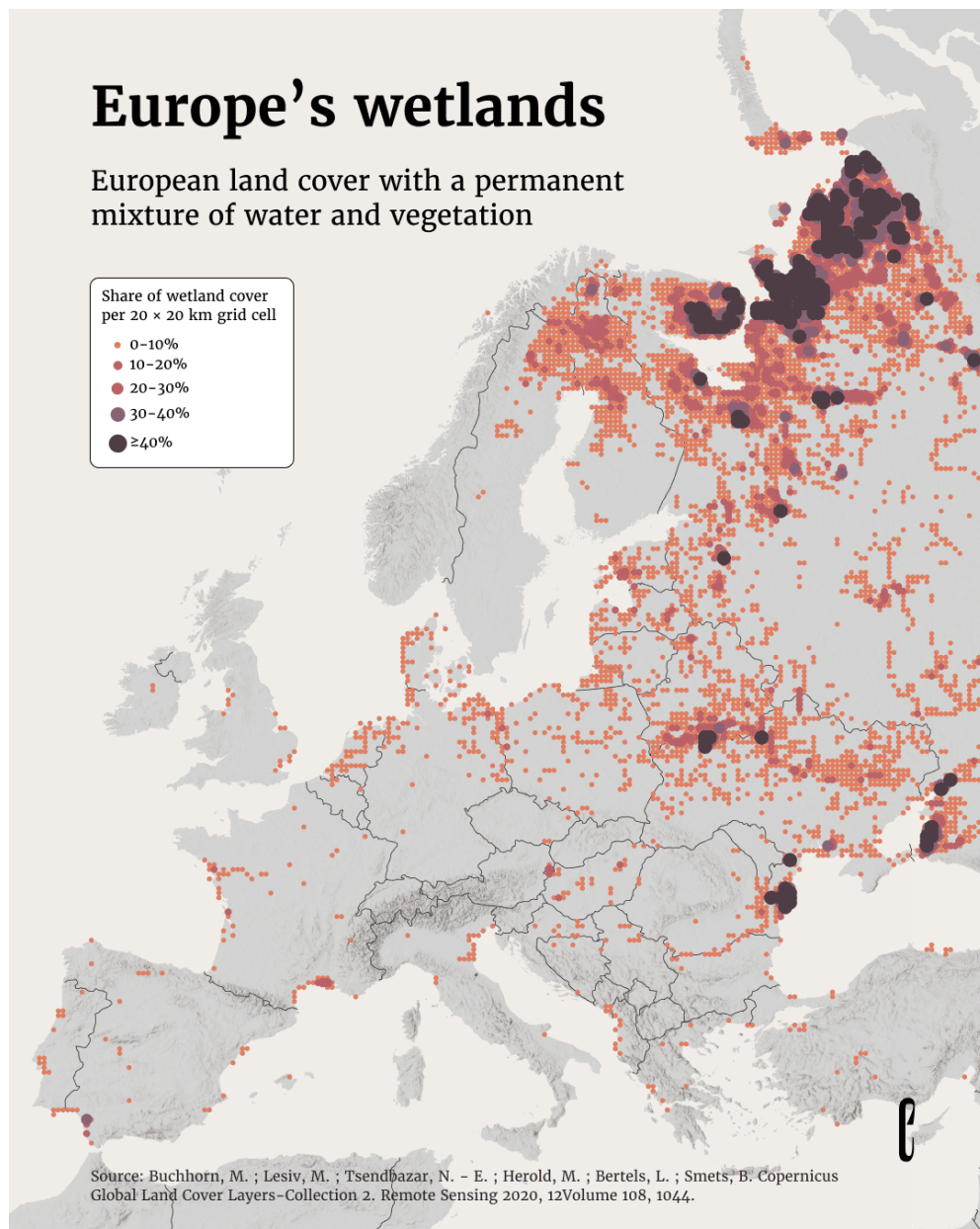
600m

Europe's wetlands

European land cover with a permanent mixture of water and vegetation

Share of wetland cover
per 20 × 20 km grid cell

- 0–10%
- 10–20%
- 20–30%
- 30–40%
- ≥40%



Source: Buchhorn, M. ; Lesiv, M. ; Tsendbazar, N. - E. ; Herold, M. ; Bertels, L. ; Smets, B. Copernicus Global Land Cover Layers–Collection 2. Remote Sensing 2020, 12Volume 108, 1044.

The predicament of Europe's swamps

~60% of European wetlands lost
or degraded over last century

~50% of EU peatlands degraded

Only ~7% of Europe's original
peatlands remain intact

Wetlands cover ~4–6% of Europe
(~350,000 km²)

Up to 80% loss in some regions
since 1900

Climate significance



Wetlands store ~30%
of global soil carbon



Peatlands store ~2×
more carbon than
global forests



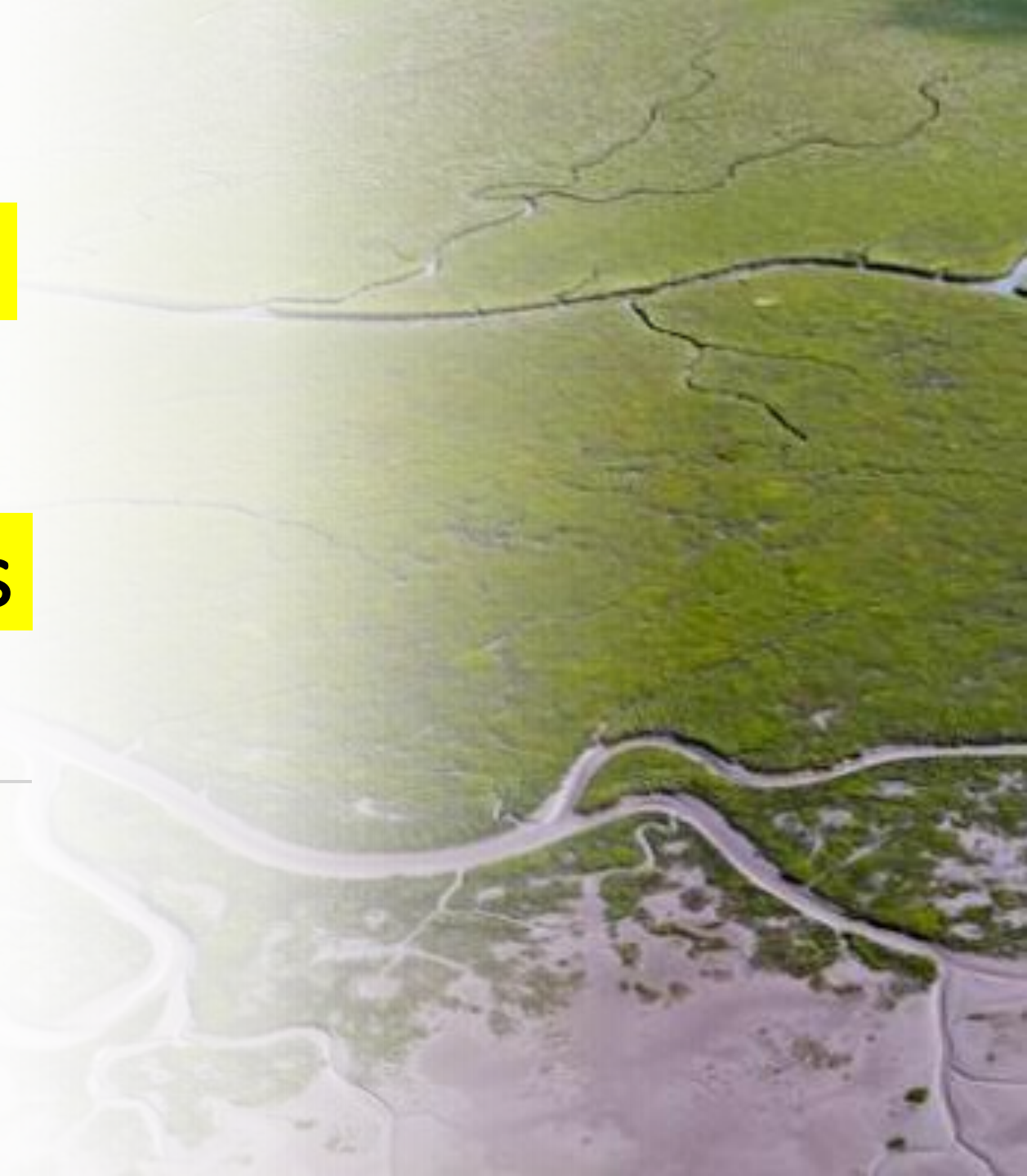
Degraded European
peatlands emit ~600
Mt CO₂/year



Drainage converts
sinks → carbon
sources



3. Leybucht: the roots of EU's Birds and Habitats Directive



OCEANI GERMANICI PARS.



TYPVS
FRISIAE
ORIENTALIS.
Auctore
Vbbone Emmio.

Amstelredam
Guiljelm Blaeuw
excudit.



Facts

- Germany planned to **move the existing dyke seawards** as part of a coastal-defence project. This would:
 - permanently convert part of the intertidal area;
 - reduce the geographical extent of the protected area;
 - affect important bird habitats.
- The Commission argued that Germany could not simply reduce the protected area for reasons of coastal defence.



Avosetta



Implications

- The Court accepted that **Member States do not have an absolute prohibition on reducing an SPA.**
- But the circumstances in which this is permissible are **very narrow.**
- The Court essentially reasoned that a reduction could be justified where there are **exceptional circumstances**, such as overriding interests relating to the environment, and where the measure is genuinely necessary.
- Importantly, the Court did **not** accept that economic or recreational considerations would ordinarily justify reducing a protected area.
- In Leybucht itself, the Court ultimately found that the German coastal-defence works could be justified because of the **serious risk of flooding and the protection of human settlements and agricultural land.**





NATURA 2000

4. Kyrtatos: no human right to swamp protection



Background

Whether **environmental damage alone** violates Article 8

Applicants argued:

- destruction of wetland ecosystem
- loss of scenic beauty
- disturbance to enjoyment of home

State argued:

- no serious interference with private/family life
- issue is environmental protection, not human rights

Ruling

No violation of Article 8

Key principle:

- The European Convention on Human Rights does **NOT guarantee a general right to a healthy environment**

Environmental harm is only relevant if it:

- directly affects **private/family life or home**

Here:

- damage to swamp/ecosystem ≠ direct impact on applicants

Implications

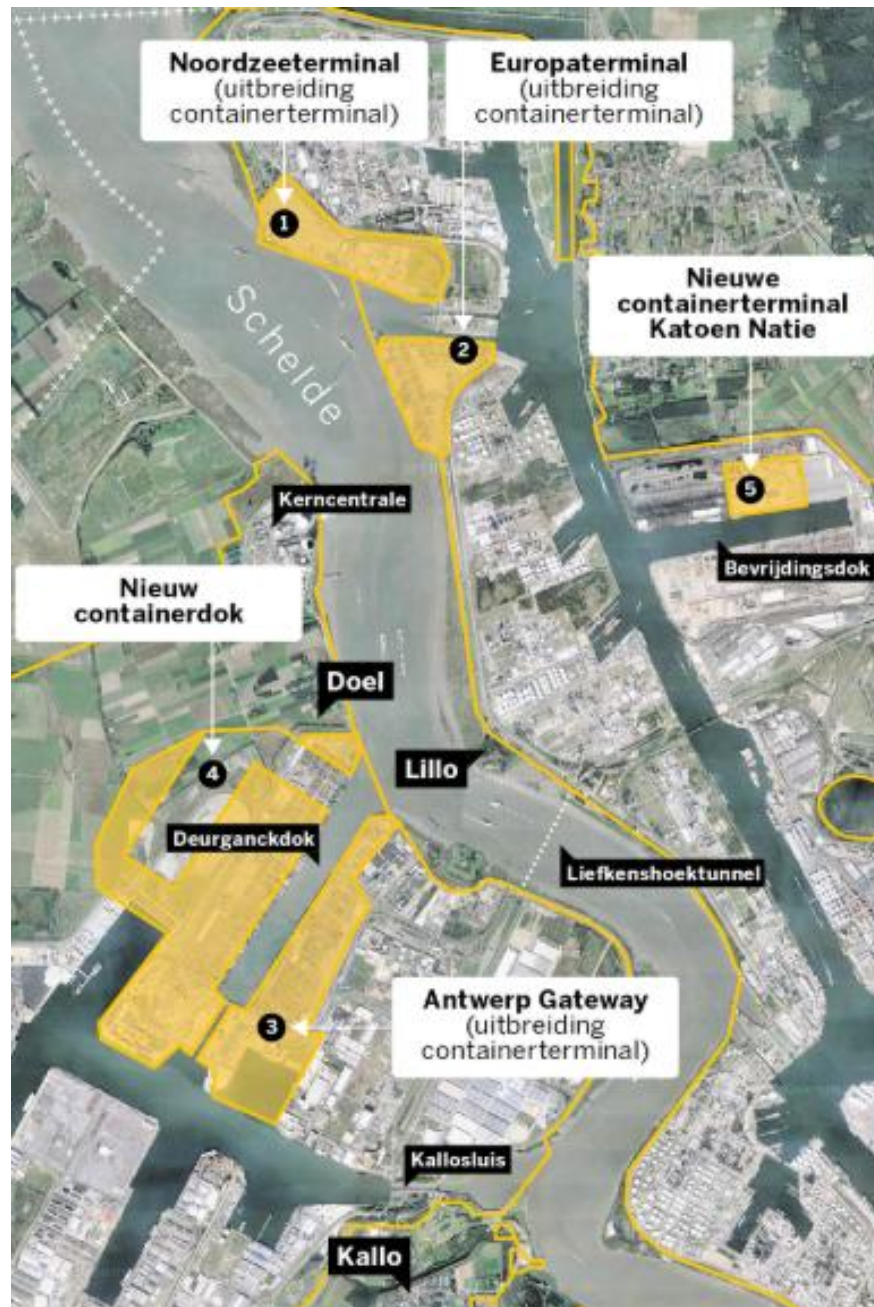
- Court distinction:
 - ✗ General environmental degradation = not enough
 - ☑ Direct impact on home life (noise, pollution, health) = Article 8 possible
- Rationale:
 - “The Convention is not designed to protect the environment as such”
- Wetlands are **not protected under Article 8 automatically**
- Protection must come through:
 - national environmental law
 - EU conservation regimes (e.g. protected sites)
- Case shows **limits of human rights approach to environmental protection**



5. Wetlands versus port expansion: from obstacle course to opportunity?







Werken Deurganckdok worden stilgelegd

Raad van State schorst gewestplanwijziging en bouwvergunning

7 juni 2000, 00:00



Bewaren



Delen

Brussel



Orleans

- **Case:** *Orléans*, Joined Cases **C-387/15 & C-388/15 (2016)** — expansion, Port of Antwerp.
- **Article 6(3):** genuine **mitigation measures** may be considered in the impact assessment.
- **Compensation:** measures offsetting habitat loss elsewhere fall under **Article 6(4)** and its stricter conditions.
- **No “future habitat” shortcut:** planned replacement habitat cannot simply justify destroying existing protected habitat.
- **Principle:** where **scientific doubt** about site integrity remains, authorisation cannot be granted.



Nederlandse Raad van State wil zaak ontpoldering Hedwigepolder niet herzien

Het besluit over de ontpoldering van de Hedwigepolder in Zeeuws-Vlaanderen voor de haven van Antwerpen wordt niet teruggedraaid. De Nederlandse Raad van State heeft de eisen daarover van voormalige eigenaar Gery de Cloedt, een Belg, afgewezen. De Cloedt vond dat de zaak moest worden herzien, omdat het water van de Westerschelde dat door ontpoldering over zijn vroegere landbouwgrond stroomt, met PFAS is vervuild.

19 OKTOBER 2022 – Laatst bijgewerkt om 19 OKTOBER 2022 11:27

Lees meer over: [pfos](#) [grond](#)



6. Donana's wetlands are saved from drought and climate change (for now)



Drought and heatwaves: Spain's Donana wetland is shrinking putting wildlife and crops at risk



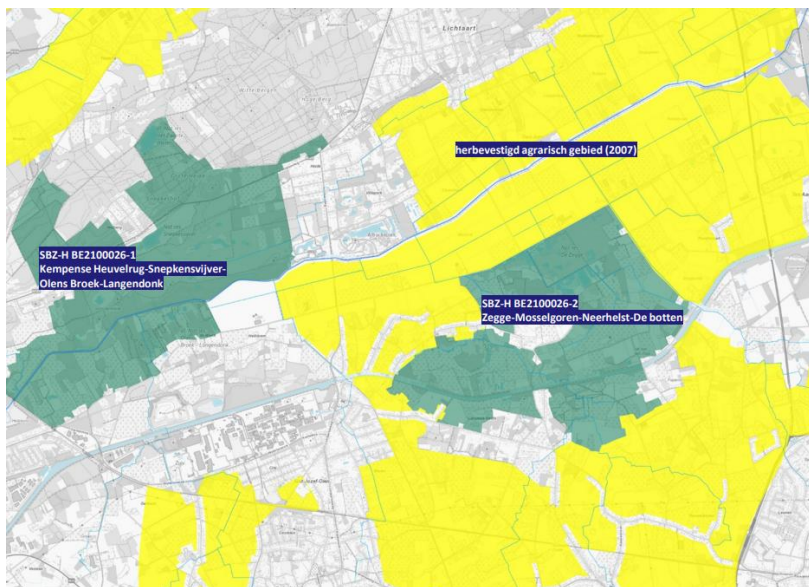


- 
- **WFD:** Spain failed to properly assess groundwater pressures and adopt sufficient measures to prevent **deterioration of groundwater bodies.**
 - **Habitats Directive, Art. 6(2):** groundwater abstraction was capable of causing deterioration of protected habitats, triggering a duty to take **appropriate preventive measures.**
 - **Precautionary approach:** Spain could not rely on uncertainty about the precise ecological effects; it had to demonstrate that abstraction would **not adversely affect protected habitats.**

Illegal strawberry farms threaten future of Spanish wetlands

Opponents say proposed amnesty for illegal water tapping in Doñana national park threatens disaster for one of Europe's green lungs





Natuurreservaat De Zegge. Zoals het pomphuisje daar pompt, pompt het nergens. © Gert Jochems

OPINIE DROOGTE

⊕ En we blijven maar waardevol moerasgebied droogpompen

De Zegge droogt uit door de drainage van de aangrenzende landbouwpolder, maar voor minister Brouns hoeft die drooglegging niet meteen te stoppen. Dat doet het ergste vrezen over de Blue Deal, schrijft Hendrik Schoukens.

7.
Klimaseniorinnen:
nature is not
climate, even not
in 2024



Ruling

Article 8 includes positive climate obligations

States must adopt mitigation and adaptation measures (legislation – carbon neutrality – carbon budgets)

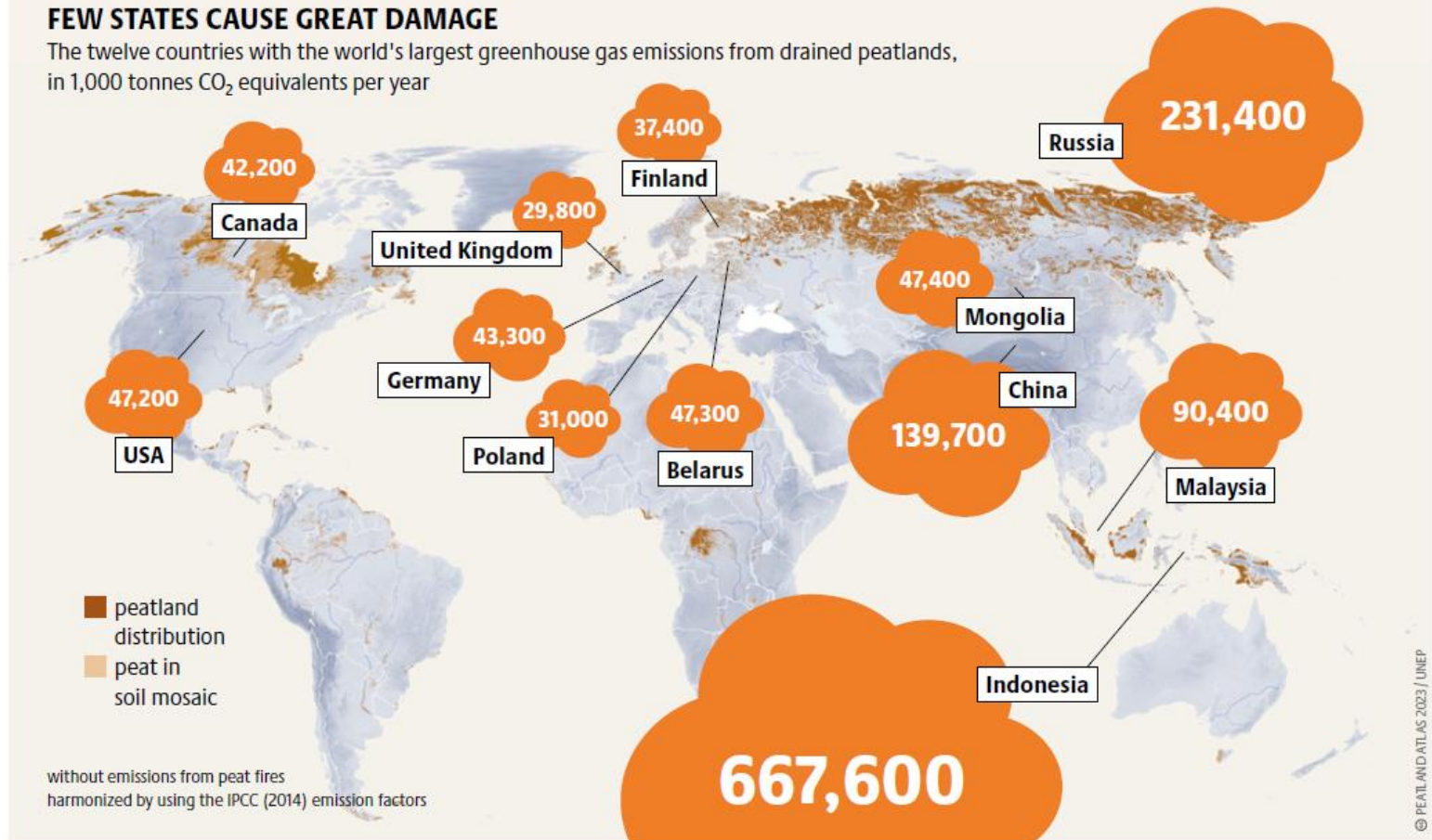
Environmental harm now linked to human rights protection

Adaptation

- *'552. Furthermore, effective protection of the rights of individuals from serious adverse effects on their life, health, well-being and quality of life requires that the above-noted mitigation measures be supplemented by adaptation measures aimed at alleviating the most severe or imminent consequences of climate change, taking into account any relevant particular needs for protection. Such adaptation measures must be put in place and effectively applied in accordance with the best available evidence (see paragraphs 115 and 119 above) and consistent with the general structure of the State's positive obligations in this context (see paragraph 538 (a) above).'*

FEW STATES CAUSE GREAT DAMAGE

The twelve countries with the world's largest greenhouse gas emissions from drained peatlands, in 1,000 tonnes CO₂ equivalents per year



Limitations

Klimaseniorinnen (ECtHR, 2024) strengthens climate protection under Article 8 but **does not create a general right to environmental protection**

Environmental harm is only relevant when it causes a **direct and serious interference with private/family life or home**

Article 8 does **not require specific policy outcomes**, such as bans on fossil fuel sales or other concrete legislative measures

States retain a **wide margin of appreciation**, especially in choosing climate and environmental policies

Even in severe environmental or climate contexts, courts focus on **procedural duties rather than ecological protection as such**

No h



8. Rights of wetlands: Mar Menor as pathway?



Endangered Mar Menor lagoon in Spain granted legal status as a person

Legislation codifies lagoon's right 'to exist as an ecosystem' and to protection, conservation and restoration



📷 The Mar Menor has been polluted by poor sewage systems, fertilisers and discharge from mining activities. Photograph: Eva Manez/Reuters

Law

Article 1 (Legal personality):
Recognises the Mar Menor lagoon and its drainage basin as a legal person, making it a subject of rights



Article 2 (Rights of the ecosystem):
establishes substantive ecological rights

Right to exist and evolve naturally: the lagoon must follow its natural ecological order and dynamics

Right to protection: requires preventing, stopping, and not authorising harmful activities

Right to conservation: obliges preservation of habitats, species, and protected natural areas

Right to restoration: mandates repair and ecological recovery after damage to restore ecosystem functions and resilience

Law

- a Representative Committee
- a Monitoring Committee
- a Scientific Committee
- actio popularis and enforcement

Impact

14 Oktober 2022

The Mar Menor Lagoon Enjoys Legal Standing: and now, what?

On 30th September, the Spanish Parliament has completed the 'Mar Menor Act' ([Ley 19/2022, of 30 September](#)), granting legal personality to the lagoon of the Mar Menor and its basin. It is the first legal text in Europe which gives rights and legal standing to a natural body. Notably, the process was initiated by a public campaign triggering the legislative procedure. As legal scholars, we fear that this move, although it constitutes a strong expression of ecological awareness, will not solve the lagoon's serious environmental deterioration.



Blanca Soro Mateo

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ORCiD >>



Santiago Álvarez

Santiago Álvarez is a lecturer for Administrative Law at the University of Murcia (Spain), focussing mainly on Environmental and Water Law.

In a European First, Landmark Verdict Upholds Constitutionality of Mar Menor's Legal Rights

By [Karen Maessen](#)

On November 20, 2024, Spain's Constitutional Court issued a pivotal ruling upholding the constitutionality of Law 19/2022, which grants legal personhood to the Mar Menor lagoon and its surrounding basin. This decision—the first in the European Union to establish Rights of Nature at the constitutional level—is a historic milestone for Earth law in Europe.

This legal victory comes in large part due to the work of Spanish lawyer, professor, and activist Teresa Vicente, [winner of the 2024 Goldman Prize](#), who initiated the campaign out of profound concern for the beloved lagoon following a mass fish die-off in 2019.

This blog post offers a breakdown of the law and analyses the court's deliberations regarding the challenges brought against it.



2024 Goldman Prize winner Teresa Vicente (Photo: Goldman Environmental Prize)



VOX, ante el TC: “La ILP del Mar Menor es una ley comunista que ataca a la libertad de empresa y a la propiedad privada”

9. NRL as
economic
suicide:
lessons from
the wildfires
in Hautes
Fagnes?



Brussels wrestles with potential impacts of EU nature restoration law

The EU's proposed nature restoration law is the subject of hot debates. While forest owners worry about the impact on jobs and the economy, activists outline the positive externalities for health and the environment.

Nikolaus J. Kurmayer  [Euractiv.com](https://euractiv.com)

This article is part of our special report "LIFE Terra – Europe's single biggest citizen-driven initiative to plant and monitor 500 million trees to mitigate climate change"

[Access the full report](#)



A global first!

- **2030 target:** restoration measures must cover at least 20% of EU land and sea by 2030.
- **Ecosystem targets:** binding obligations cover **terrestrial, freshwater, coastal and marine ecosystems**, including habitats, rivers, pollinators, agricultural ecosystems and urban nature.
- **Non-deterioration:** Member States must prevent significant deterioration of restored areas and certain habitats, creating an important continuity between conservation and restoration.
- **National restoration plans:** Member States must prepare plans, translating EU targets into concrete restoration measures, with the first draft plans due 1 September 2026.



What's in it for wetlands?

- **Article 4 – Terrestrial, coastal and freshwater ecosystems:** restoration of Annex I habitat types, including wetland habitat types, whether inside or outside Natura 2000.
- **Article 9 – Rivers and floodplains:** restoration of natural connectivity of rivers and natural functions of related floodplains; this includes removing artificial barriers and the EU objective of restoring at least 25,000 km of rivers to free-flowing condition by 2030.
- **Article 11 – Agricultural ecosystems:** Member States must restore drained peatlands under agricultural use: 30% by 2030, 50% by 2040 and 70% by 2050.



Brussel mist Europese deadline voor natuurherstel, 'maar het is wel een prioriteit'

Milan Augustijns © BRUZZ 27/08/2026 06.30u

Delen:      



© Kevin Van den Panhuyzen-BRUZZ (3) | Ans Persoons (Vooruit) op het balkon van het Brussels Parlement.

België mist de Europese deadline op 1 september voor het indienen van het natuurherstelplan. Dat komt doordat onder meer het Brusselse huiswerk niet af is. Bevoegd staatssecretaris Ans Persoons (Vooruit) maakt zich sterk dat het plan er tegen oktober zal liggen.

10. From
nuisance to
lifeline:
support from
the judges?



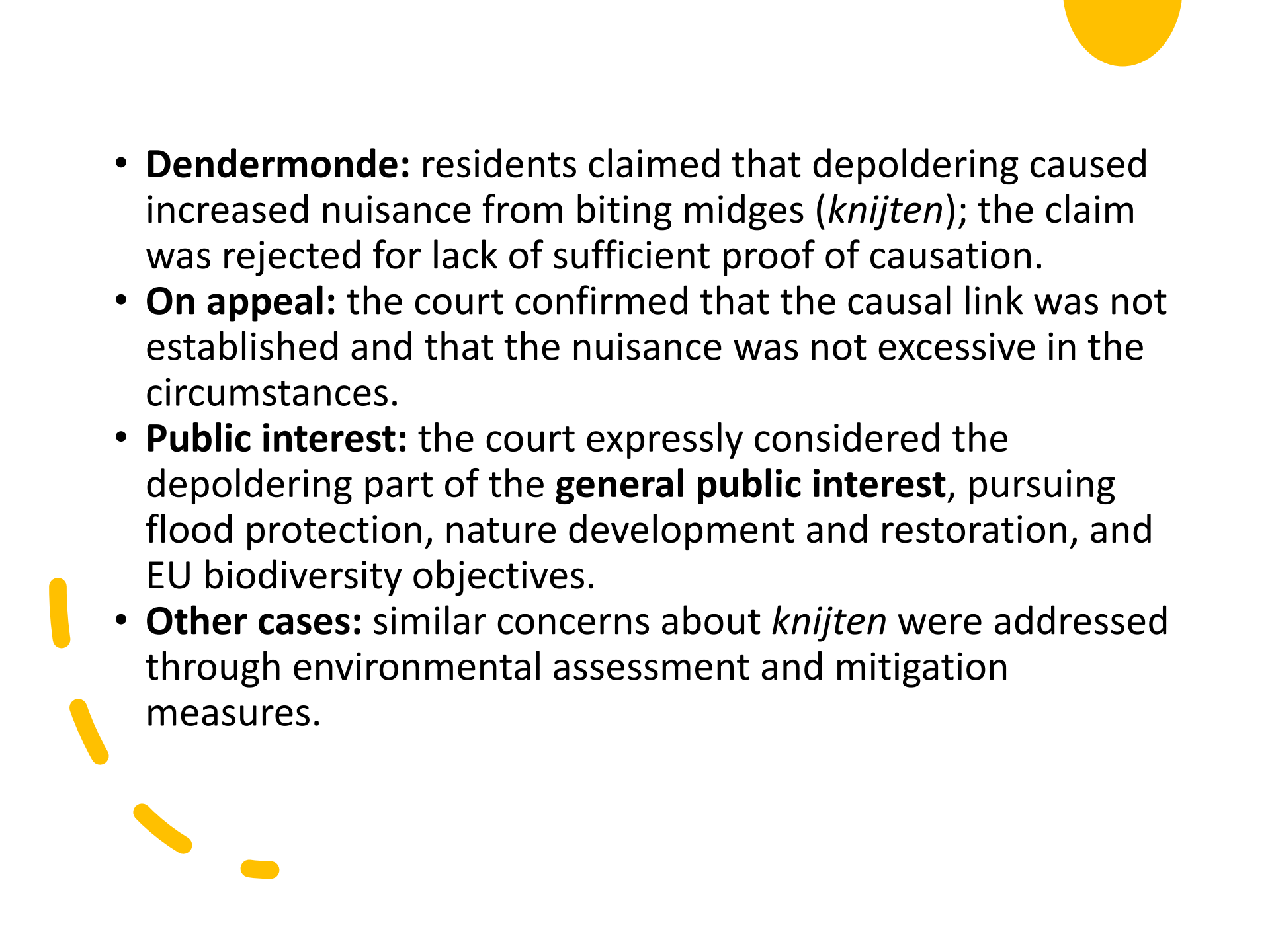
Ontpolderingsgebied in Baasrode veroorzaakt geen knijtenhinder, oordeelt nu ook rechter in hoger beroep

 Artikel luisteren | 4min

 Meer info



Het ontpolderingsgebied Groot Schoor in Baasrode, bij Dendermonde.

- 
- **Dendermonde:** residents claimed that depoldering caused increased nuisance from biting midges (*knijten*); the claim was rejected for lack of sufficient proof of causation.
 - **On appeal:** the court confirmed that the causal link was not established and that the nuisance was not excessive in the circumstances.
 - **Public interest:** the court expressly considered the depoldering part of the **general public interest**, pursuing flood protection, nature development and restoration, and EU biodiversity objectives.
 - **Other cases:** similar concerns about *knijten* were addressed through environmental assessment and mitigation measures.

Boerenbond trekt naar Raad van State tegen GRUP Kleine Nete en Aa

Omdat er onvoldoende gehoor is gegeven aan de betrokken landbouwers en er bijna 1.200 hectare landbouwgebied verloren gaat door herbestemming, trekt Boerenbond naar de Raad van State tegen het gewestelijk ruimtelijk uitvoeringsplan (GRUP) 'Vallei van de Kleine Nete en Aa'. "De manier waarop er in dit proces met het agrarisch gebied is omgegaan is voor ons onaanvaardbaar", zegt Boerenbondvoorzitter Lode Ceyssens.

6 MAART 2024 – Laatst bijgewerkt om 6 MAART 2024 17:04 [Griet Lemaire](#)

Lees meer over: [ruimtelijke ordening](#) [open ruimte](#) [grond](#)



11. Wetland restoration and right to a healthy environment?



- **ICJ Advisory Opinion, 23 July 2025**, discussing Article 7(9) of the Paris Agreement, the Court says that adaptation options identified by the IPCC include “**restoration of ecosystems**”. It then concludes that such options, when implemented through appropriate measures and best efforts, “could, in the Court’s view, meet the adaptation obligations of parties under Article 7, paragraph 9, of the Paris Agreement.”
- **Para. 451**: separately, in the context of **reparation**, the Court states that restitution for climate-related harm may take the form of “restoring ecosystems and biodiversity.”

- **ICJ Advisory Opinion, 2025, para. 393:** a clean, healthy and sustainable environment is a **“precondition for the enjoyment of many human rights”**.
- The Court concludes that the human right to such an environment is **“inherent in the enjoyment of other human rights”** and **“essential for the enjoyment of other human rights.”**

12. Back to Eden?



Conclusion

- Wetlands shifted from wastelands to climate infrastructure
- Three pathways converge:
 1. EU and national environmental law
 2. Article 8 + R2HE (international evolutions)
 3. Rights of nature
- Rights architecture is expanding for wetland protection

RAAD VAN STATE, AFDELING BESTUURSRECHTSPRAAK

VIIe KAMER

A R R E S T

**nr. 252.698 van 20 januari 2022
in de zaak A. 229.192/VII-40.643**

In zake : 1. de NV DEBAIL
 2. Jan VAN SPRINGEL
 bijgestaan en vertegenwoordigd door
 advocaat Wim Mertens
 kantoor houdend te 3580 Beringen
 Paalsesteenweg 81
 bij wie woonplaats wordt gekozen

tegen :

het VLAAMSE GEWEST
bijgestaan en vertegenwoordigd door
advocaat Bart Bronders
kantoor houdend te 8400 Oostende
Zandvoordestraat 444, bus 1
bij wie woonplaats wordt gekozen



The Guardian view on the flamingo revolution: Albanians are standing up for their rights, as well as for nature

Editorial

Plans for a mega-resort, backed by Ivanka Trump and Jared Kushner, have spurred broader questions about who politics is serving





Een Servische herder ziet hoe een grote natuurbrand zich verspreidt. © Uros Arsic/afp

OPINIE

Natuurherstel is een mensenrecht: de overheid moet de bevolking beschermen tegen de gevolgen van klimaatverandering

De strikte scheidingsmuur tussen natuurbehoud en mensenrechten begint stilaan te wankelen, schrijft Hendrik Schoukens.